

## Judgment Interest Reform

In the absence of an applicable statute or rule, the courts generally applied the traditional common law rule that prejudgment interest was not available in tort actions since the claim for damages was unliquidated. In an effort to compensate tort plaintiffs for the often-considerable lag between the event giving rise to the cause of action, or filing of the lawsuit, and the actual payment of the damages, many state legislatures have enacted laws that provide for or allow prejudgment interest in particular tort actions or under particular circumstances. In addition to seeking to compensate the plaintiff fully for losses incurred, the goal of such statutes is to encourage early settlements and to reduce delay in the disposition of cases, thereby lessening congestion in the courts.

**PROBLEM:** Although well-intended, the practical effects of prejudgment interest statutes can be inequitable and counter-productive. Prejudgment interest laws can, for example, result in over-compensation, hold a defendant financially responsible for delay the defendant may not have caused, and impede settlement.

**ATRA'S POSITION:** At a time when policymakers are attempting to lower the cost of the liability system in an equitable and just manner, prejudgment interest laws that currently exist and new proposals should be reviewed to ensure that they are structured fairly and in a way designed to foster settlement. At a minimum, the interest rate should reflect prevailing interest rates by being indexed to the treasury bill rate at the time the claim was filed and an offer of judgment provision should be included.

### Tennessee

#### Prejudgment Interest- H.B. 2982 (2012)

This bill establishes the Federal Reserve weekly average prime loan rate as the standard interest rate on judgments so long as such rate does not exceed 10%.

### Alabama

#### Judgment Interest Reform: S.B. 207 (2011); Amended Code of Ala. § 6-5-410.

Changes the rate of interest on judgments in Alabama from 12% to 7.5%. Prior to the enactment of S.B. 207, a defendant who lost a lawsuit and chose to appeal had to begin paying 12% post-judgment interest on the amount the court or jury awarded the plaintiff, creating a significant financial deterrent to appealing an unjust verdict.

## **Florida**

### **Judgment Interest Rate Reform: H.B. 567 (2011)**

Provides that the judgment interest rate will be set in accordance with the interest rate as set by the Chief Financial Officer based on the discount rate of the Federal Reserve Bank of New York for the preceding 12 months plus 400 basis points (4 percent). The interest rate on the judgment is to be adjusted annually on January 1 of each year.

## **Oklahoma**

### **Prejudgment Interest Reforms: HB 1603 (2009); Amended 12 Okl. St. § 140.**

Provides that prejudgment interest does not begin to accrue until two years after the beginning of a lawsuit; reduced the interest rate charged.

### **Prejudgment and Postjudgment Interest Reform: HB 2661 (2004).**

Sets prejudgment and postjudgment interest rate at the prime rate plus 2 percent (effective January 1, 2005).

### **Prejudgment Interest Reform: SB 629 (2003).**

Sets the prejudgment interest rate in medical malpractice cases to the average U.S. Treasury Rate of the preceding calendar year.

### **Prejudgment Interest Reform: SB 488 (1986).**

Prohibits the assessment of prejudgment interest on punitive damages awards. Sets the prejudgment interest rate at 4% above the rate on the U.S. Treasury Bill.

## **Missouri**

### **Prejudgment Interest Reform: H.B. 393 (2005); § 355.176 R.S.Mo.**

Specifies that prejudgment interest is to be calculated at an interest rate equal to the Federal Funds Rate plus three percent.

### **Prejudgment Interest Reform: HB 700 (1987).**

Permits the assessment of prejudgment interest only in cases where the judgment exceeds a settlement offer.

## **Georgia**

### **Prejudgment Interest Reform: HB 792 (2003).**

Sets prejudgment interest rates at the Federal Reserve's prime interest rate plus 3%.

#### **Texas**

##### **Prejudgment Interest Reform: HB 4 (2003).**

Sets the prejudgment interest rate to the New York Federal Reserve prime rate, with a floor of 5% and a ceiling of 15%.

##### **Prejudgment Interest Reform: HB 971 (1995).**

Allows prejudgment interest only for damages that occurred before judgment.

##### **Prejudgment Interest Reform: SB 6 (1987).**

Limits the period during which prejudgment interest may accrue if the defendant has made an offer to settle the lawsuit.

#### **New Hampshire**

##### **Prejudgment Interest Reform: HB 140 (2001); Amended RSA 336:1.**

Sets the prejudgment interest rate at the 26-week discount U.S. Treasury Bill rate.

#### **South Carolina**

##### **Prejudgment Interest: H. 3403 (2000).**

Sets prejudgment interest rates at the prime rate plus one percent.

#### **Alaska**

##### **Prejudgment Interest Reform: HB 58 (1997).**

Sets prejudgment interest rate at the Twelfth Federal Reserve District's discount rate plus 3%. Prohibits the assessment of prejudgment interest for future damages and punitive damages.

#### **Iowa**

##### **Prejudgment Interest Rate Reform: HF 693 (1997); Amended Iowa Code § 535.3.**

Sets the prejudgment interest rates at the U.S. Treasury Rate plus 2%.

##### **Prejudgment Interest Rate Reform: SF 482 (1987).**

Prohibits the assessment of prejudgment interest for future damages. (Other

interest accrues from the date of commencement of the actions at a rate based on the U.S. Treasury Bill.)

#### **Louisiana**

##### **Prejudgment Interest Rate Reform: (1997).**

Sets prejudgment interest rates at the average Treasury Bill rate for 52 weeks plus 2%. Provided varying rates of prejudgment interest for actions pending or filed during the last 10 years.

##### **Prejudgment Interest Rate Reform: HB 1690 (1987).**

Sets prejudgment interest rates at the prime rate plus 1% with a floor of 7% and a cap of 14%.

#### **Colorado**

##### **Prejudgment Interest Reform: SB 165 (1995).**

Limits the amount of prejudgment interest that can be assessed between accrual of the action and filing of the claim to below the \$1,000,000 limit on the total amount recoverable in medical liability claims.

#### **Maine**

##### **Prejudgment Interest Rate Reform: LD 2520 (1988).**

Sets prejudgment interest rates and postjudgment interest rates at the U.S. Treasury Bill rate.

#### **Rhode Island**

##### **Prejudgment Interest Rate Reform: HB 5885 (1987).**

Sets the prejudgment interest rate at the U.S. Treasury Bill rate. Provides that interest accrues from the date the lawsuit is filed.

#### **Nebraska**

##### **Prejudgment Interest Reform: LB 298 (1986).**

Reduces the rate of interest to 1% above the rate on U.S. Treasury Bill.

#### **Michigan**

##### **Prejudgment Interest Reform: HB 5154 (1986).**

Prohibits the assessment of prejudgment interest on awards for future damages.

**Minnesota**

**Prejudgment Interest Reform: SB 2078 (1986).**

Prohibits the assessment of prejudgment interest on awards for future damages.

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